

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. During the summer months each year the petitioner provides rooms downstairs in her home to players on the Vermont Expos minor league baseball team. Because of their travel, the baseball players actually stay in the petitioner's

home a total of about 38 days each summer (although their belongings are there when they are gone). These rooms have a separate entrance from the outside. From the inside, the players' rooms are accessible through doors to the rest of the petitioner's home, including the area where she provides day care.

3. However, the inside doors to the players' living quarters can be locked so that the players do not have interior access to the rest of the house.

4. As a condition of her family day care registration SRS requires the petitioner to certify that the interior doors to the players' living quarters remain locked so that the players do not have interior access to the rest of the house. SRS has told the petitioner that the alternative, if the doors were unlocked, would be that the petitioner would have to provide SRS with written consent on a Record Check form from players staying with her so that SRS could conduct criminal record checks on them.

5. The petitioner has complied with the condition that she keep the doors locked, but she seeks a declaratory ruling from the Board whether this is required by the regulations. She maintains that the baseball players are "temporary guests" in her home and that it is unreasonable and unnecessary to

either restrict their access to the rest of her home or provide signed Record Check forms to the Department when they are staying there.

ORDER

The Department's decision is affirmed.

REASONS

The Regulations for Family Day Care Homes include a provision prohibiting persons convicted of fraud or crimes of violence, as well as persons who have had a report of child abuse substantiated against them, from being "present at a Family Day Care Home". Regulations, Section I(4). The regulations also provide: "The Registrant shall be responsible for the actions of all caregivers, as well as all other persons in the home, and shall ensure that compliance with the Family Day Care Home Registration Regulations is maintained." Id., Section I(5).

The dispute in this case is whether the baseball players in question can be considered "present" in the petitioner's home within the meaning of the above regulations. SRS takes the position that the players are "routinely or regularly present", and that as long as they are guests in part of the

petitioner's home for a prolonged period of time (at least 38 days over a two-and-a-half-month period) they cannot have access to the part of the home where day care is provided unless the petitioner provides the players' written consent on a Record Check form to allow SRS to do a background check on them.

The analysis in this case must start with the limitations that are placed on the Board's authority. 3 V.S.A. S 3091(d) includes the following provision: "The Board shall not reverse or modify agency decisions which are determined to be in compliance with applicable law, even though the board may disagree with the results of those decisions". See also Fair Hearing Rule No. 17. Recognizing that the purpose of the Department's regulations is to protect the health and safety of children (see 33 V.S.A. § 3502[d]), it cannot be concluded that the Department's position in this case is contrary to law or regulations.

It might well be argued that the regulations do not contemplate that all "guests" in a home in which there is a family day care must be either reported to the Department or denied access to the part of the home where day care is provided, regardless of how "temporary" their stay might be. However, it must be concluded that the situation in the

petitioner's home, where baseball players reside every summer on a regular and predictable basis for the better part of a two-and-a-half-month period, is one in which the players can reasonably be considered to be "present in the home" during that period if they have unfettered access to the entire house. Thus, it cannot be concluded that SRS's requirement that the petitioner either identify her guests to the Department or certify that they do not have access to her day care is an unreasonable application of its regulations.

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